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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

DAVID HO, on behalf of himself and others similarly situated and on behalf of the general public and DOES 1-20

Case No. CV 05-04867 JF (HRL)

Plaintiff.

v.

ERNST & YOUNG, LLP

SAN JOSE DIVISION

**STIPULATION AND [PROPOSED]
ORDER STRIKING THE
DECLARATIONS OF COLM DRISCOLL
AND PAUL ESTRADA FROM
PLAINTIFFS' MOTION FOR CLASS
CERTIFICATION**

JOSEPH LANDON individually and on
behalf of all others similarly situated

Plaintiff

v

ERNST & YOUNG LLP, a limited liability partnership; ERNST & YOUNG U.S. LLP, a limited liability partnership; and DOES 1-100, inclusive.

Defendant.

Caption continued on next page.

1 MICHELLE RICHARDS, on behalf 16 of
2 herself and all others similarly situated and
on behalf of the general public,

C 08-4988 JF (HRL)

3 Plaintiff,

4 v.

5 ERNST & YOUNG LLP, and DOES - 50

6 Defendant.

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1 Plaintiffs Sarah Fernandez and Michelle Richards, and Defendant Ernst & Young LLP, by and
2 through their respective counsel, hereby agree and stipulate as follows:

3 **WHEREAS**, Plaintiffs submitted to the Court the Declarations of Colm Driscoll and Paul
4 Estrada (the “Declarations”), putative class members, and rely on those declarations in their Motion for
5 Class Certification;

6 **WHEREAS**, Defendant has attempted to take depositions of Driscoll and Estrada pursuant to
7 validly-issued subpoenas, but both witnesses have refused to appear;

8 **WHEREAS**, pursuant to Federal Rules of Civil Procedure 37 and 45, Defendant has moved in
9 the United States District Court for the Northern District of Illinois to compel Driscoll’s testimony, and
10 intends to file a motion in the United States District Court of the Central District of California with
11 respect to Estrada;

12 **WHEREAS**, the parties have continued to meet and confer to attempt to resolve their
13 differences with respect to Driscoll’s and Estrada’s depositions;

14 **NOW THEREFORE**, the parties will, and hereby do, stipulate as follows:

- 15 1. Plaintiffs agree to withdraw the Declarations, to strike any references to the Declarations
16 from their Motion for Class Certification and all supporting documents filed therewith, and
17 to refrain from attaching or citing to the Declarations in Plaintiffs’ reply papers on the
18 Motion for Class Certification; and

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1 2. Defendant will withdraw its Motion to Compel with respect to Driscoll, now pending in the
2 United States District Court for the Northern District of Illinois, and not seek further
3 enforcement of its subpoenas for Driscoll's and Estrada's appearances.

4 Respectfully submitted,

5 Dated: November 11, 2010

AKIN GUMP STRAUSS HAUER & FELD LLP

6 By /s/ Gregory W. Knopp

7 Gregory W. Knopp
8 Attorneys for Defendant,
9 ERNST & YOUNG LLP

10 Dated: November 11, 2010

FOLKENFLIK & McGERTY

11 By /s/ Max Folkenflik

12 Max Folkenflik
13 Attorneys for Plaintiffs David Ho, Sarah Fernandez and
14 Michelle Richards

15 **PURSUANT TO STIPULATION, IT IS SO ORDERED.**

16 Dated: 11/16, 2010

17 By JF

18 The Honorable Jeremy Fogel
19 JUDGE, UNITED STATES DISTRICT COURT

1 PROOF OF SERVICE

2 STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

3 I am employed in the County of Los Angeles, State of California. I am over the age of 18 and
4 not a party to the within action; my business address is: 2029 Century Park East, Suite 2400, Los
Angeles, California 90067. On November 11, 2010, I served the foregoing document(s) described as:
5 **STIPULATION AND [PROPOSED] ORDER STRIKING THE DECLARATIONS OF COLM**
DRISCOLL AND PAUL ESTRADA FROM PLAINTIFFS' MOTION FOR CLASS
6 **CERTIFICATION** on the interested party(ies) below, using the following means:

7 **All parties identified for Notice of Electronic Filing generated by the**
Court's CM/ECF system under the referenced case caption and
8 **number**

9 BY ELECTRONIC MAIL OR ELECTRONIC TRANSMISSION. Based on a court order or an agreement of the parties
10 to accept service by e-mail or electronic transmission, I caused the document(s) to be sent to the
respective e-mail address(es) of the party(ies) as stated above. I did not receive, within a reasonable
11 time after the transmission, any electronic message or other indication that the transmission was
unsuccessful.

12 I declare that I am employed in the office of a member of the bar of this court at whose
direction the service was made.

13 Executed on November 11, 2010 at Los Angeles, California.

14
15
16 Rose Shushanyan
17 [Print Name of Person Executing Proof]


[Signature]